

"Q. Did Fritz' unhappiness have anything to do with your making the gift to him in 1931?

65 "A. Because of the fact that Fritz was so unhappy I made him the gift of the General Motors shares to enable him to establish a position in the United States for himself."

Mr. Gallagher: Your Honor, the argument that probably will ensue later is a few pages further over. But, noticing the time, I wondered if Your Honor desired to adjourn before reaching it.

The Court: You go ahead, until you reach that point.

Mr. Gallagher: All right, sir.

I now ask to have marked as Plaintiff's Exhibit 6 a copy of a letter from Fritz von Opel, attorney in fact to General Motors, dated October 17, 1931.

(The copy of letter dated October 17, 1931 was accordingly marked for identification as Plaintiff's Exhibit No. 6.)

(The reading from the deposition then proceeded, as follows):

"Q. Do you know whether or not Fritz von Opel, as your attorney in fact, exercised the option to sell the Opel shares to General Motors?

"A. Yes.

"Q. Do you recollect what year it was that Fritz exercised that power?

"A. I am not quite sure, it might be 1931 or 1934.

66 "Mr. Connor: I will ask Dr. Kronstein to give you the substance of the document which I have dated October 17, 1931 purporting to be a letter from Fritz von Opel, attorney in fact to General Motors. I will ask you if you have any reason to believe the option was exercised on any other date than that?

"A. I don't believe so."

Mr. Gallagher: I now offer Plaintiff's Exhibit 6, which it has been admitted was received or sent on that date.

(The copy of letter heretofore marked for identification as Plaintiff's Exhibit No. 6 was accordingly received in evidence.)

(The following question and answer were then read):

"Q. In connection with the gift, Mr. von Opel, did you cause your son to discuss the matter with Dr. Max Hachenburg of Mannheim?

"A. Yes."

Mr. Gallagher: I will ask to have marked as Plaintiff's Exhibit 7 a letter dated October 3, 1931, from Dr. Hachenburg to Dr. Wilhelm von Opel.

(The letter was accordingly marked for identification as Plaintiff's Exhibits 7 and 7-A.)

(The reading from the deposition was resumed):

"I will show you this document purporting to be a letter dated, October 3, 1931 from Dr. Hachenburg to you and I will ask you if such a letter was received by you.

"A. I remember this letter. I am only sorry that I have not followed the advice given in this letter. I did receive the letter.

"Q. Did you receive it in the regular course of mail?

"A. I believe I received this letter by mail."

Mr. Gallagher: I offer Plaintiff's Exhibit 7 in evidence.

(The documents heretofore marked for identification as Plaintiff's Exhibit 7 and 7-A were accordingly received in evidence.)

Mr. Gallagher: I ask to have marked as Plaintiff's Exhibit No. 8 a document purporting to be an enclosure in the letter of October 3, from Dr. Hachenburg to Wilhelm von Opel.

(The document was accordingly marked for identification as Plaintiff's Exhibit No. 8.)

(The following question and answer was then read):

"Q: I will show you this document marked Plaintiff's Exhibit No. 8 and ask you if that was an enclosure in the letter of October 3, from Dr. Hachenburg to you?"

"A. Yes."

Mr. Gallagher: I now offer Plaintiff's Exhibit 8 in evidence.

68 (The document heretofore marked for identification Plaintiff's Exhibit 8 was accordingly received in evidence.)

(The following question was then read from the deposition):

"Q. The first paragraph of Plaintiff's Exhibit No. 7 recites in substance that the day before October 3, that is, October 2, Dr. Hachenburg had a long discussion with your son and gave him an outline of the contract."

Mr. Gallagher: I will now ask to have marked as Plaintiff's Exhibit 9 this document.

(The document referred to was accordingly marked for identification as Plaintiff's Exhibits 9 and 9-A.)

(The following question and answer were then read from the deposition):

"Q. I will now show you Plaintiff's Exhibit No. 9 and ask you if at or about that time your son Fritz von Opel showed you that outline?

"A. I cannot remember."

Mr. Gallagher: I will now ask to have marked as Plaintiff's Exhibit 10.

(The document referred to was accordingly marked for identification as Plaintiff's Exhibit No. 10.)

(The following question and answer were then
69 read from the deposition):

"Q. I will now show you another document purporting to be a letter dated October 5, 1931 from Dr. Max Hachenburg to you and ask you if you received such a letter in the regular course of mail?

"A. I remember that I received this letter."

Mr. Gallagher: I now offer Plaintiff's Exhibits 9 and 10 in evidence.

(The documents heretofore identified as Plaintiff's Exhibits 9, 9-A, and 10 were accordingly received in evidence.)

(The reading from the deposition then proceeded as follows):

"Q. Although you had your son Fritz discuss this gift matter with Dr. Hachenburg, am I correct in my understanding that Mr. Wronker-Flatow made the document in its final form?

"A. Yes.

"Q. It is a fact, is it not, that Fritz von Opel sold the 600 shares of Adam Opel stock which you gave him?

"A. Yes it is.

"Q. Yesterday you testified that Fritz had sold the six hundred shares of Adam Opel stock which you gave him. Do you know what he did with the proceeds of that sale?

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"A. From conversations I learned that he acquired oil wells, participated in a brewery and acquired a gasoline refinery. He seemed to be interested in the gasoline refinery because he wanted to transform the oil into gasoline, I was told as time went on. I haven't seen anything with my own eyes.

"Q. Did you ever direct Fritz as to what he should do with the proceeds of the sale of Adam Opel stock?

"A. Never did. I discuss this matter with him.

"Q. Then, it is the fact, is it not, that you never undertook to control in any way what he should do with the proceeds of the sale of the stock?

"A. Yes.

"Q. Did you have anything to do with Fritz' investment in the Uebersee Finanz Korporation?

"A. I never had anything to do with that.

"Q. Did you ever direct Fritz to place the securities which he bought with the proceeds of the Opel stock into a holding company of any kind?

"A. Never.

"Q. Did you ever have any communication with Adler and Company, the Swiss banking firm?

"A. As far as I remember there was a director whose name was Dr. Frankenburg. I was familiar with him from Frankfurt. Whether I exchanged letters I do not remember. I do not believe that, no, no. I exchanged letters with Dr. Frankenburg of a personal character but not of a business character.

"Q. Did you ever have any business letter communication with the firm of Adler and Company itself?

"A. I cannot remember.

"Q. Were you ever a director of the Uebersee Finanz Korporation?

"A. No.

71

"Q. Did you ever own any stock in the Uebersee Finanz Korporation?

"A. No.

"Q. Did you ever, to the best of your recollection, have any business letter communication with the Uebersee Finanz Korporation?

"A. No.

"Q. To refresh your recollection, Mr. von Opel, I will call your attention to three items which appear on the books of the Uebersee Finanz Korporation and will ask you about each one of them. The books appear to show that on or about 4 October 1934 that there was paid to you through Uebersee at the direction of your son the sum of five hundred and nine Swiss francs.

"(Mr. von Opel asked if this was paid to him in Switzerland and Mr. Connor stated that the books didn't show.)

"Mr. von Opel: I received money from my son several times. He gave me a stag as a gift for shooting in Hungary and he paid for this. He financed my trip with francs to South America.

"Q. In reference to the South American trip, is it your recollection that you got that payment through the Rotterdamische Bankvereinigung?

"A. I have no idea from where the money came.

"Q. Do you remember approximately the amount of the advance which Fritz made in connection with your South American trip?

"A. I don't know the exact amount but I assume it was about 10,000 to 20,000 Reichsmarks computed in German currency.

"Q. When you made this trip to South America, can you recollect the year?

"A. I was in South America three times.

"Q. Was one of those trips during the year 1935, do you recollect?

"A. About this time. It was after my world trip which was about 1932.

"Q. Do you recollect when you were on this shooting trip in Hungary, Mr. von Opel?

"A. I was in Hungary repeatedly. I was in Hungary about five times for hunting purposes.

"Q. To refresh your recollection, I will call your attention to the fact that the books of Uebersee show that apparently about 1934, 509 Swiss francs or the equivalent was paid to you in Paris. Do you recollect that?

"A. No.

"Q. Have you ever seen any of the books of the Uebersee Finanz Korporation?

"A. Never, no.

"Q. Did you ever have any arrangement of any kind with Uebersee Finanz Korporation in which they would make advances to you?

"A. No."

Mr. Gallagher: At this time I direct your attention to page 25, at the top of that page—

"Mr. Connor: I wish, Dr. Kronstein, that you would advise the witness I am going to shift to another subject at least for awhile."

Now we have a number of exhibits here, Your Honor.

The Court: A number of exhibits?

Mr. Gallagher: To be identified and marked again.

The Court: Is there any objection to these?

Mr. Gallagher: No, I don't believe there is.

The Court: Perhaps this is a good place to stop.
74 I will have to get a couple of opinions out between now and tomorrow morning. So until tomorrow morning at 10 o'clock.

(Accordingly, at 4:10 p.m., the trial was adjourned until tomorrow morning, Thursday, December 9, 1948, at 10 o'clock.)

PROCEEDINGS

The Deputy Clerk: Ueberse Finanz-KORPORATION
v. Clark.

Mr. Gallagher: Your Honor, I would like to present to the Court Mr. Michael J. Kenny, member of the bar of the District, who is associated with us.

The Court: All right.

Deposition of WILHELM VON OPEL (Resumed)

(Reading from the deposition was resumed, Mr. Gallagher reading the questions and Mr. Ingoldsby, on the witness stand, reading the answers, as follows):

Mr. Gallagher: I direct your attention to page 30, the middle of the page, commencing with the language—

"Mr. Connor: I will ask to have marked as Plaintiff's Exhibit #24 a copy of a document entitled 'History of the Gift' dated September 18, 1933. I will ask to have the witness read Plaintiff's Exhibit #24. Is that a memorandum from your files?

"A. Yes.

"Q. Did you make it on the date shown?

"A. About this date. I cannot say if it was one-half day earlier or not.

"Q. Are the statements in that memorandum true?

"A. Yes."

78 Mr. Gallagher: I offer Plaintiff's Exhibit 24 in evidence.

The Court: They will be received, unless there is objection.

(The document was accordingly received in evidence as Plaintiff's Exhibit No. 24.)

(The reading from the deposition was resumed):

"Q. I ask that the witness take a look at the fifth paragraph of Plaintiff's Exhibit #5. The gift agreement makes reference to 'Niessbrauch', doesn't it?"

"A. Yes.

"Q. What did you intend by the provision concerning the 'Niessbrauch'?"

"A. I intended to accomplish that my son takes care of me if I should suffer financial breakdown and have no money any more.

"Q. Did you ever intend to ask your son for any money while you had enough to support yourself?"

"A. I never intended that.

"Q. Did you ever intend to ask him to do any more than provide for your and your wife's support when you had no money?"

"A. No.

"Q. Up to this time have you ever asked your son to give you any part of the income from the property which you gave him?"

"A. No.

79 "Q. Have you adequate property at this time to support your wife and yourself?"

"A. Thanks be to God, yes.

"Q. Mr. von Opel, I believe you stated that your age is 77 years, is my recollection correct?"

"A. I am 76 years old.

"Q. Now within the last two or three months have you been ill?"

"A. Yes. I was sick seven weeks ago.

"Q. What illness did you have at that time?"

"A. Pleurisy.

"Q. And how long were you ill?"

"A. About three weeks but even now I am in the stage of convalescence."

Mr. Gallagher: Now turn to page 56, please—

"Cross Examination

"Mr. Wilhelm von Opel further testified as follows: ..

"By Mr. Baum:

"Q. Mr. von Opel,"—

The Court: Do you want to read that?

Mr. Gallagher: Your Honor, we want to offer this portion of the cross, unless the defense does.

Mr. Burling: We don't want to read it, but my suggestion is that if they read a part of it, and we come back, the record will be chopped up.

80 The Court: That is why I might suggest they do it, and if they leave out any part you want, you can offer it.

Mr. Gallagher: I may have the right to go back to any portion we may offer as redirect?

Mr. Burling: We also wish, if Your Honor please, to read certain portions of the direct that were omitted.

The Court: All right.

Mr. Gallagher (to Mr. Burling): You say now you wish to offer certain portions of the direct that were omitted?

Mr. Burling: We should read that first, Your Honor, before the cross-examination.

The Court: I will let you read any part you want, that you think is helpful to your case.

(Mr. Ingoldsby having left the witness stand and returned to the trial table):

Mr. Baum: If Your Honor please, Mr. Laufer may follow the same procedure, and be the witness?

The Court: Surely.

(Mr. Laufer now on the witness stand):

Mr. Baum: I will start reading at the top of page 25:

"Mr. Connor: I wish, Dr. Kronstein, that you would advise the witness I am going to shift to another subject at least for awhile."

The Court: Is this direct?

Mr. Baum: That is correct, Your Honor.

81 The Court: Perhaps I should have a copy of this, and I can follow you a little better. All right, go ahead.

Mr. Baum (continuing reading):

"I ask to have marked as Plaintiff's Exhibit #15 a copy of a document dated September 9, 1931 addressed to the Finanzamt at Wiesbaden."

May I have the document which was marked Plaintiff's Exhibit 15 to the deposition?

Mr. Gallagher: Has it been offered?

Mr. Baum: I ask that this document be marked Defendant's Exhibit 1.

Mr. Gallagher: What is that marked?

Mr. Baum: That is 15, in your deposition.

Mr. Gallagher: You are going to switch the order? Off the record, please.

(A document having been marked for identification as Defendant's Exhibit 1):

Mr. Baum: Your Honor, rather than hold up the proceedings, I have offered the English translation of the document. I think we may go ahead until the plaintiffs find from the Court files the original of this in German.

The Court: Is there any objection to that?

Mr. Gallagher: No objection.

We have it now, Your Honor.

The Court: All right; proceed.

82 Mr. Baum: And I offer this document as Defendant's Exhibit 1-A.

(The documents referred to were marked and received in evidence as Defendant's Exhibits 1 and 1-A.)

Mr. Baum: I ask to have marked as Defendant's Exhibit 2 an instrument which was attached in the deposition to Plaintiff's Exhibit 15, a letter of September 9, 1931, to the Finanzamt Wiesbaden.

The Court: We will have it understood, gentlemen, wherever a document is offered and there is no objection, it will be received without my announcing it. If there is objection, of course, I will rule on it.

Mr. Gallagher: Yes, sir.

(The letter was accordingly marked as Defendant's Exhibit 2.)

Mr. Baum: (To the Deputy Clerk) And Defendant's Exhibit 2-A.

(The last-mentioned document was marked as Defendant's Exhibit 2-A.)

Mr. Baum: And I ask to have a copy of a document dated October 28, 1931, addressed to Firma Adler and Company Kommandit Aktien-Gesellschaft, marked as Defendant's Exhibit 3, and the German will be 3-A.

(The copies of the document were accordingly marked for identification as Defendant's Exhibits 3 and 3-A.)

83 Mr. Baum: I ask to have marked, which will be Defendant's Exhibit 4, letter dated December 24, 1931, addressed to Wilhelm von Opel from the Schweiz-

rische Kreditanstalt. (Credit Suisse). And Defendant's Exhibit 4-A.

(The documents were accordingly marked as Defendant's Exhibits 4 and 4-A.)

Mr. Baum: (Resuming reading from deposition):

"I hand Plaintiff's Exhibits #15, #15-A, #16 and #17"—Now Defendant's Exhibits 1, 2, 3, and 4—"to the witness and ask that he read them.

"Q. This morning, Mr. von Opel you testified you had no recollection of any written correspondence with Adler and Company. I will ask you if Plaintiff's Exhibit #16 refreshes your recollection to the contrary?

"A. This letter was not in my mind when I testified this morning.

"Q. I will ask you now then, after having shown you the letter, do you recollect having written this letter to Adler and Company?

"A. I don't see any signature under this letter. I assume that a signature should appear on the copy.

"Q. Shouldn't the signature appear on the original rather than on the copy, Mr. von Opel.

"A. I assume that a signature should also appear on the copy. I cannot remember to have written this letter.

84 "Q. I will now show what purports to be a letter to the Finanzamt at Wiesbaden—Plaintiff's Exhibit #15 and ask you whether or not you recollect having written that letter to the Finanzamt?

"A. I don't remember this letter. This whole matter is entirely out of my memory."

Mr. Baum: I will now skip to page 29, the question beginning with the words "On Saturday, I asked you"—

"Q. On Saturday, I asked you about Plaintiff's Exhibit #16 purporting to be a letter dated October 28, 1931 from you to Adler and Company and I believe you stated you had no recollection of this letter. I will now ask you if over the week end you have gone over several papers pertaining to this matter and if your recollection is now refreshed in regard to this letter?

"A. Yes, I now remember.

"Q. Will you state whether or not this is a copy of the letter you sent to Adler and Company?

"A. Yes."

Mr. Baum: I offer Defendant's Exhibit 3 in evidence.

(The document heretofore marked for identification as Defendant's Exhibit No. 3 was accordingly received in evidence.)

Mr. Baum: I now ask to have marked as Defendant's Exhibit 5 a copy of a letter from Adler and Company
85 to Wilhelm von Opel, dated November 30, 1931. That is referred to in the deposition as Plaintiff's Exhibit 16-A.

(To the Deputy Clerk) This will be 5-A, and this will be Defendant's Exhibit 5.

(The documents were accordingly marked for identification as Defendant's Exhibits 5 and 5-A.)

(The following question and answer were now read from the deposition):

"Q. I will now ask the witness if he received this letter?

"A. Yes."

Mr. Baum: I offer Defendant's Exhibit 5 in evidence.

(The documents heretofore identified as Defendant's Exhibits 5 and 5-A were accordingly received in evidence.)

(The reading from the deposition was then resumed as follows):

"Q. To the best of your recollection are these documents, Plaintiff's Exhibit #16 and #16-A, the only communications you ever had with Adler and Company?"

"A. Yes.

"Q. Will you state briefly why you wanted to make the guarantee mentioned in those letters?"

"A. To establish an existence for my son.

"Q. But you were unable to go through with that transaction, were you?"

86 "A. The 3,500,000 reichsmarks involved in this guarantee I had to call back to Germany.

"Q. So therefore, you couldn't go forward with that transaction?"

"A. Therefore, I could not execute this transaction, so I came to the idea to make the gift."

Mr. Baum: I now ask that the Defendant's Exhibits 1, 2, 3, 4, and 5 be received in evidence.

Mr. Gallagher: No objection.

(Defendant's Exhibits 1, 2, 3, 4, and 5 were accordingly received.)

Mr. Baum: That is all the direct examination I wish to read. I will now proceed to the cross.

This is the cross-examination of Wilhelm von Opel, appearing on page 56 of the deposition:

"The witness, Mr. Wilhelm von Opel, further testified as follows:

By Mr. Baum:

"Q. Mr. von Opel, in 1929 what position did you hold in Adam Opel, A. G.?"

"A. I was Chairman of the Board of Supervisors.

"Q. And after 80% of the shares of Adam Opel, A. G. were sold to General Motors in 1929, did you continue in the same position?"

"A. Yes, General Motors confirmed me in my position.

87 "Q. And how long did you remain in that position?"

"A. Until a few years ago. Until I was for political reasons constrained to retire.

"Q. What do you mean for 'political reasons constrained to retire'?"

"A. At the order of General Motors I joined the Nazi party.

"Q. And for that reason you were forced to retire?"

"A. As a member of the party I was compelled to resign from my position as a chairman of the board of supervisors.

"Q. By whom were you so compelled?"

"A. I resigned voluntarily already prior to the enactment of the law requiring that because I knew what was coming.

"Q. And after 1929 did you hold any positions in any other business enterprise in Germany?"

"A. I was also a member of the board of supervisors in the Continental Rubber, Hapag, North German Lloyd, Iron Foundry Becker which is a member of the Opel concern and in Adam Opel, A. G.

"Q. Did you take an active part in the companies you have just mentioned?"

"A. Not active, but as chairman of the board of supervisors I was given certain tasks of Adam Opel, A. G. I was given certain special tasks of General Motors.

88 "Q. Did you have investments in companies other than the Opel which you mentioned?

"A. Yes.

"Q. Were those investments made before or after 1929?

"A. In the main it was after 1929 because then I came into possession of liquid funds.

"Q. By your answer you mean do you not, that you used the money you received from the sale of the Opel shares in 1929?

"A. Yes.

"Q. And how much did you personally receive from General Motors in 1929 from the sale of the Opel shares?

"A. I cannot say definitely how much it was.

"Q. Was it 24,000,000 Rm?

"A. I was just about to say 24,000,000 or 26,000,000 Rm. more or less, after I had paid my obligation.

"Q. And with this money which you received from General Motors, you became interested in other companies and became a member of the board of directors, is that correct?

"A. Yes.

"Q. Did you have any other interests in business enterprises before 1929?

"A. Yes, by share holdings.

"Q. And what was the approximate value of these investments?

"A. I cannot remember that.

89 "Q. And after the sale to General Motors in 1929, you owned 600 shares of Adam Opel, A. G., is that correct?

"A. Yes.

"Q. And you still owned those shares as of January 1, 1931, did you not?

"A. Yes."

Mr. Baum: I will now skip from that point to line 5 on the next page, with the question beginning "The 600 remaining Opel shares"—

"Q. The 600 remaining Opel shares which you had originally retained in 1929 were sold to General Motors by your son Fritz von Opel as attorney in fact for you in 1931, were they not?

"Mr. Baum: For the purpose of assisting the witness in answering the question, I will show him Plaintiff's Exhibit #61

(To counsel for plaintiff). Is that still Plaintiff's Exhibit 61

Mr. Gallagher: Yes, in the same order.

(The reading from the deposition was then resumed, Mr. Baum reading the questions and Mr. Laufer reading the answers, as follows):

"A. I have made a gift of the shares to my son and I was annoyed about the fact that he sold them.

"Q. But you know that he sold them to General Motors in 1931, do you not?

"A. I see that from this document and as a member of the board of supervisors this fact was reported to me.

"Q. And do you know for what price those shares were sold to General Motors?

"A. We have made an agreement with General Motors pursuant to which we could sell the shares at such and such a price but I do not know at what price they were actually sold.

"Q. When you were questioned by Mr. Connor, you identified this document, Plaintiff's Exhibit #6 as being a copy of a notice to the General Motors Corp. exercising the option under the agreement of April 11, 1929, did you not?

"A. Yes."

Mr. Baum: Plaintiff's Exhibit 6 was here retranslated to the witness. Then—

"Q. Can you tell from Plaintiff's Exh. #6 at what price the shares were sold?

"A. No.

"Mr. Opel: I want to point out that I never bothered about the sale because the shares were no longer in my possession.

"Q. You say you never bothered about the sale of the shares after this time because the shares were no longer in your possession, is that correct?

91

"A. Yes.

"Q. That is because you claim you gave the shares to your son on October 5, 1931, is that not correct?

"A. Yes.

"Q. And yet on October 6, 1931, you gave your son a power of attorney to deal with these shares on your behalf with General Motors Corporation, is that not true?

"Plaintiff's Exh. #4 here retranslated to the witness.

"A. If it says so in the document, it must be correct."

Mr. Baum: I ask to have marked as Defendant's Exhibit 6 a copy of a cable from Wilhelm von Opel to Mr. Sloan, dated October 23, 1931.

(The copy of cable was marked for identification as Defendant's Exhibit 6.)

Mr. Ingoldsby: What is the old number on that?

Mr. Baum: It is the same number. It happened to work out to be the same number.

Mr. Ingoldsby: I see.

(The reading from the deposition resumed):

"I show the witness Def. Exh. #D-6 and ask him to read it.

"Q. Is that a copy of a cable which you sent to General Motors on October 23, 1931?

"A. I cannot say that.

"Q. You don't remember?

92 "A. No, I don't remember."

Mr. Baum: I offer this Defendant's Exhibit 6 in evidence at this time, since plaintiffs have admitted that this document was received by Wilhelm von Opel, subsequent to the date of this deposition.

(The document heretofore identified as Defendant's Exhibit 6 was accordingly received in evidence.)

(The reading from deposition resumed):

"I ask to have marked as Def. Exh. D-7, a copy of a cable to Wilhelm von Opel signed 'Smith', dated October 30, 1931.

"I show the witness Def. Exh. D-7 and ask him to read it.

"Q. Do you remember this cable?

"A. No.

"Q. In other words, Mr. von Opel, you do not remember that on October 23 you offered to keep one-half of the 600 shares of Opel, A. G. until the first of January, 1936?

"A. No, I do not remember that.

"Q. And you do not remember that on October 30, 1931, General Motors accepted your proposal?

"A. That is all new to me."

Mr. Baum: I now offer Defendant's Exhibit 7, since that has also been admitted to have been received by Wilhelm von Opel.

93 (The copy of cable was received in evidence as Defendant's Exhibit No. 7.)

Mr. Baum: I now ask to have marked as Defendant's Exhibit 8 a certified copy of the transcript of record of the United States Circuit Court of Appeals for the Second Circuit, in the case of Uebersee Finanz Korporation, A. G. vs. Walter T. Rosen and others, which bears the signature or certificate of the clerk of the Second Circuit; and the Federal Reserve Bank of New York was a party defendant.

(The certified copy of transcript of record was marked for identification as Defendant's Exhibit No. 8.)

Mr. Baum (resuming reading from deposition):

"I show the witness the affidavit of Fritz von Opel, which appears beginning on page 43 of that record, and ask to have translated to him the paragraph which bears the number 6."

Mr. Gallagher: Excuse me just a moment, Mr. Baum.

Mr. Baum: I am substituting the whole affidavit for part of the affidavit, to make it more simple.

Mr. Gallagher: All right.

(The reading from the deposition was then resumed as follows):

"Q. Now, Mr. von Opel, do you remember having cabled to General Motors offering to retain 300 shares and receiving payment for them in gold or on a gold basis?

94 "A. No.

"Q. So you do not remember sending a cable to General Motors on October 23, 1931?

"A. I do not remember.

"Mr. Baum: I point out to the witness that Def. Exh. D-8 is a sworn statement of his son.

"Q. Do you think that your son was not telling the truth?

"A. My son tells the truth as his father does.

"Q. Your son in this affidavit Def. Exh. D-8, states that after October 5, 1931, he came to New York and that he learned from Mr. Smith that you had agreed by cable with Mr. Sloan to modify the escrow agreement for 300 Opel shares. Is that true or not?

"A. I do not remember the matter. It is so important—he wanted to arrange the matter one-half one way and the other half the other way—I really should remember it.

"Q. But you cannot remember it?

"A. I cannot remember that. I made a gift of the shares on October 5 to my son and after that the matter was settled as far as I was concerned."

Mr. Baum. I will not insist on my motion to strike, which is contained in the record.

(The reading resumed):

95 "I ask to have marked as Def. Exh. D-9 a copy of a letter from Mr. E. F. Regan of the National City Bank to Mr. Fritz von Opel, dated September 22, 1933 and acknowledged by Mr. Regan before a notary public.

"I ask to have the body of the letter translated to the witness.

"Q. I ask the witness whether he instructed the Deutsche Bank & Disconto Gesellschaft Frankfurt on October 24, 1931 to cable the National City Bank in the form quoted in Def. Exh. D-9?

"A. I do not know anything about it.

"Q. As far as you can remember now, Mr. von Opel, you have no knowledge of instructing the bank to send such a cable?

"A. No, I do not remember anything.

"Q. Mr. von Opel, in the year 1931 you had an account in Switzerland in the sum of 3,875,000 Swiss francs, did you not?

"A. Yes, more or less."

Mr. Baum: At this point I offer Defendant's Exhibit 9, the genuineness of which has also been admitted by the plaintiffs.

(The document was received in evidence as Defendant's Exhibit No. 9.)

(The reading from deposition resumed):

96 "Q. And as stated in Defendant's Exhibit 2, formerly Plaintiff's Exhibit 15-A, that amount was to be used to guarantee an obligation of your son Fritz to Adler and Company, is that not correct?

"A. Yes, to guarantee it.

"Q. And as stated in Defendant's Exhibit 2, formerly Plaintiff's Exhibit 15-A, your son's obligation involved the purchase of shares of Uebersee Fananz Korporation, did it not?

"A. I do not know of the matter.

"Q. But you remember the guarantee?

"A. No, I do not remember the guarantee.

"Q. You just testified you did?

"A. I said that I remembered the sum of 3,700,000 francs.

"Q. Do you remember that on September 9, 1931, you applied for a license to dispose of the Swiss account to guarantee your son's obligation as shown in Plaintiff's exhibit #15?

"A. I remember this letter and also that I had the money returned home.

"Q. When?

"A. That must have been around that time or three or four months or three or four weeks later.

97 "Q. Now you testified, Mr. von Opel, that you made this guarantee in order to enable your son to establish an existence for himself; did you not?

"A. Yes, he should use the money for that purpose.

"Q. And then on October 5, 1931, you claim you made a gift to your son of 600 shares of Opel for the same purpose, did you not?

"A. I believe that the money had to be returned to Germany and by the fact of the return of the money to Germany I conceived the notion of making the gift of the shares.

"Mr. Baum: I now ask to have marked as Def. Exh. D-10 a letter dated March 21, 1932 from der Praesident des Landesfinanzamts Kassel to Mr. Wilhelm von Opel."

Mr. Baum: I ask to have the English marked Defendant's Exhibit 10, and the German 10-A.

(The documents were marked for identification as Defendant's Exhibits 10 and 10-A.)

Mr. Baum: I also ask to have marked as Defendant's Exhibits 11 and 11-A, from letter requesting registration of liabilities to foreign creditors, dated November 30, 1931.

(The form letter was accordingly marked for identification as Defendant's Exhibits 11 and 11-A.)

98 Mr. Baum: I ask to have marked as Defendant's Exhibit 12 a copy of a letter and attachments, consisting of three pages, to the registration office for foreign liabilities, dated December 11, 1931.

(The copy of letter and attachments was accordingly marked for identification as Defendant's Exhibit 12.)

Mr. Baum: I ask to have marked as Defendant's Exhibit 13 a letter to the Devisenstelle Frankfurt, dated January 5, 1932, together with an attachment consisting of two pages and representing a list of patents.

(The letter was marked for identification as Defendant's Exhibit 13.)

Mr. Baum: I ask to have marked as Defendant's Exhibit 14 a letter addressed to the Devisenstelle Frankfurt, dated January 13, 1932, and an attachment thereto of the same date, containing a declaration in lieu of an oath.

(The letter was accordingly marked for identification as Defendant's Exhibit 14.)

Mr. Baum: I ask to have marked as Defendant's Exhibit 15 and 15-A, a letter from the Devisenstelle Frankfurt to Wilhelm von Opel, dated January 25, 1932.

(The letter was marked for identification as Defendant's Exhibits 15 and 15-A.)

Mr. Baum: I ask to have marked as Defendant's Exhibit 16 a copy of a letter to the Devisenstelle Frankfurt, dated February 5, 1942.

(The copy of letter was marked for identification as Defendant's Exhibit 16.)

Mr. Baum: I ask to have marked as Defendant's Exhibit 17 and 17-A a notice of attachment dated February 10, 1932, from the sheriff's office, Zurich, to Dr. Wilhelm von Opel.

(The notice was marked for identification as Defendant's Exhibits 17 and 17-A.)

Mr. Baum: I ask to have marked as Defendant's Exhibits 18 and 18-A a letter from the Schweizerische Kreditanstalt to Mr. Wilhelm von Opel, the letter being dated February 25, 1932.

(The letter was marked for identification as Defendant's Exhibits 18 and 18-A.)

Mr. Baum: I ask to have marked as Defendant's Exhibits 19 and 19-A a notice of request for transfer of property attached, from the sheriff's office, Zurich, dated March 15, 1932, addressed to Dr. Wilhelm von Opel.

(The notice was accordingly marked for identification as Defendant's Exhibits 19 and 19-A.)

Mr. Baum: I ask to have marked as Defendant's Exhibits 20 and 20-A a letter of the Reichsbank Wiesbaden to Dr. Wilhelm von Opel, dated March 24, 1932.

(The letter was marked for identification as Defendant's Exhibits 20 and 20-A.)

Mr. Baum: I ask to have marked as Defendant's Exhibit 21 copy of a letter of April 5, 1932, from Dr. Wilhelm von Opel to Reichsbankstelle Wiesbaden.

(The letter was accordingly marked for identification as Defendant's Exhibit 21.)

Mr. Baum: I ask to have marked as Defendant's Exhibit 22 copy of a letter dated April 14, 1932, from Dr. Wilhelm von Opel by Miss Uebel to the registration office for foreign liabilities, and attached thereto a completed registration form.

(The copy of letter was marked for identification as Defendant's Exhibit 22.)

Mr. Baum: I ask to have marked as Defendant's Exhibits 23 and 23-A, letter of May 9, 1932, from the registration office for foreign liabilities to Dr. Wilhelm von Opel, containing therein a completed supplementary form.

(The letter was marked for identification as Defendant's Exhibits 23 and 23-A.)

(Reading from deposition resumed):

"I show the witness Defendant's Exhibit D-11 which is a request for a report of foreign liabilities and ask him whether he remembers having received that form?

"A. Yes, that was the registration of foreign liabilities.

"Q. And that form is dated November 30, 1931, is it not?

"A. Yes, that is the covering letter in which they sent the registration forms."

Mr. Baum: I offer Defendant's Exhibit 11 in evidence.

(The document heretofore marked for identification as Defendant's Exhibit 11 was accordingly received in evidence.)

Mr. Baum (Resuming reading from deposition):

"Mr. Connor: I concede that Defendant's Exhibit 10, a letter from the Devisenstelle Frankfurt to Mr. Wilhelm von Opel dated March 21, 1932 was received at the office of Mr. Wilhelm von Opel.

"Mr. Baum: I offer Defendant's Exhibit D-10 in evidence.

"Mr. Connor: No objection.

"Mr. Baum: I offer Defendant's Exhibit D-11 in evidence.

"Mr. Connor: No objection.

"Mr. Baum: I show the witness Defendant's Exhibit D-12 consisting of a copy of a letter to the registration office for foreign liabilities dated December 11, 1931, together with a completed form and a supplement thereto bearing the same date and ask him to read it.

"Q. Is Defendant's Exhibit D-12 a copy of a letter and an accompanying report which you sent to the registration office for foreign liabilities?
102

"A. Yes.

"Mr. Connor: I concede that Defendant's Exhibit D-12 is a copy of the documents submitted to the registration office for foreign liabilities."

Mr. Baum: Mr. Gallagher, are you now willing to concede all the documents up through 23?—And we will stop reading it.

Mr. Gallagher: Surely, we are.

Mr. Baum: I offer Defendant's Exhibits 12 through 23, as having been conceded by the plaintiffs.

(The documents heretofore identified as Defendant's Exhibits 12 through 23 were accordingly received in evidence.)

Mr. Baum: And I will therefore skip and begin reading at the top of page 68, line 3:

"Mr. Baum: Mr. von Opel, I show you Defendant's Exhibit D-13 and ask you to read it.

"Q. Mr. von Opel, in that letter, Defendant's Exhibit D-13, you state that your son attached your Swiss account in order to protect himself, do you not?

"A. Yes.

"Q. But you had given your son on October 5, 1931, you say, 600 Opel shares, had you not?

"A. Yes.

103 "Q. Then why did your son need the 3,500,000 Swiss francs to protect himself?

"A. I do not know what kind of a transaction of my son that was.

"Mr. Baum: I show the witness Defendant's Exhibit D-17 and ask him whether his son attached his Swiss bank account.

"A. Something was involved and some sort of bank transaction.

"Q. According to Defendant's Exhibit D-10 the application for a license to release the Swiss bank account was denied on March 21, 1932, was it not?

"A. They have rejected that.

"Q. Now you testified a short while ago, Mr. von Opel, that you made a gift of the 600 shares of Opel stock to your son because the 3,500,000 Swiss francs had to be brought back to Germany, did you not?

"A. I do not recall whether it is true or not.

"Q. You said before that because you had to bring the money back you conceived the idea of a gift of the shares to your son, did you not?

"A. I must think about the matter. It happened a long time ago. I cannot state that so precisely."

Mr. Baum (continuing): Now resuming on the next page:

"By Mr. Baum:

104 "Q. Mr. von Opel, will you tell us in your own words the reasons why you claim you made a gift of the 600 shares of Opel stock to your son Fritz?

"A. He was supposed to build himself a new livelihood after I had sold his livelihood in Germany to the Americans.

"Mr. Baum: I have asked to have marked as Defendant's Exhibit D-24 a memorandum to the files entitled 'Personal considerations concerning the gift'.

"I show the witness Defendant's Exhibit D-24 and ask him to read it.

"Q. Is this exhibit Defendant's Exhibit D-24, a copy of a memorandum which you wrote on September 19, 1933?

"A. Yes."

Mr. Baum: I offer Defendant's Exhibit 24 in evidence.

(The document identified as Defendant's Exhibit No. 24 was received in evidence.)

Mr. Baum (Resuming reading):

"Mr. von Opel, I call your attention to the fact that this memorandum states that the gift was made above all to avoid an increase in the inheritance tax, is that not correct?

"A. If one makes a gift one considers why one
105 makes a gift.

"Q. Who originally suggested the idea of a gift, you or your son Fritz?

"A. The idea of a gift originated with me since my son could not make a gift.

"Q. Did your son ask you to make a gift to him?

"A. He did not ask me, I did that of my own accord.

"Q. Mr. von Opel, I call your attention to Plaintiff's Exhibit 24 which states in the second paragraph that your son came to you and suggested the idea of a gift?

"A. I remember that my son came to me and that we discussed the matter and then Mr. Hachenburg said it could be done by way of a gift.

"Q. Mr. von Opel, I show you Plaintiff's Exhibit 5, a copy of the purported gift agreement and ask you when that was executed?

"A. It was signed in accordance with the date.

"Q. And where was it signed?

"A. As far as I can remember I signed in Ruesselsheim.

"Q. In your office or in your home?

"A. In my office for at that time I no longer resided in Ruesselsheim.

"Q. And when did your wife and your son sign the
106 agreement?

"A. I assume that my son signed at the same moment that I signed.

"Q. Were any other people present besides yourself, your son and your wife when you signed?

"A. I cannot say that any more.

"Q. Was the original of that exhibit shown to any government officials?

"A. I believe that the document was submitted to the foreign exchange authorities or to the prosecuting authorities.

"Q. Did they keep the original or did they give it back to you?

"A. I cannot remember that. I have been looking for the original and was unable to find it.

"Q. Was your home or your office in any way damaged during the war?

"A. Not very much. Somewhat.

"Q. Were either of them hit by bombs?

"A. My house here was hit by a dud.

"Q. Did you lose any of your personal papers as a result of the war?

"A. Not as a result of the war but because of the fact that the Opel firm left me so little time to vacate my office some of the files disappeared.

"Q. You had a day to vacate your office, did you
107 not?

"A. A day.

"Q. And you took your papers with you when you left your office, did you not?

"A. Some of the papers were burned which came from my office which I had had for forty years. Some I dragged to a neighboring house and some I took along.

"Q. Who burned the papers?

"A. My secretary.

"Q. Which secretary?

"A. Either Miss Muehleberger or Miss Esklony.

"Q. Were those papers burned at your instructions?

"A. Yes; upon my instructions.

"Q. Is it possible that the original of Plaintiff's Exhibit #5 was burned?

"A. That may have been possible.

"Q. Did your daughter Elinor ever see the original or a copy of Plaintiff's Exhibit #5?

"A. I cannot say that. She had nothing to do with it.

"Q. Was the original of Plaintiff's Exhibit #5 ever shown to anyone else other than your own family and the foreign exchange authorities?

"A. I had no interest in showing it to others but I do not know.

108 "Mr. Baum: I ask to have marked as Defendant's Exhibit D-25 a letter from Fritz von Opel to his father, dated December 21, 1936. And I show the letter to the witness and ask him to read it.

"Q. Is this a letter which you received from your son Fritz?

"A. Yes."

Mr. Baum: I offer Defendant's Exhibit 25 in evidence.

(The letter was marked as Defendant's Exhibit No. 25 and 25-A for identification, and received in evidence.)

Mr. Baum: I will now skip down that page to where I ask to have marked Defendant's Exhibit 27—

"I ask to have marked as Defendant's Exhibit 26"—formerly 27—"a letter from Mr. Wilhelm von Opel to his son Fritz, dated September 21, 1933." That should be 26 and 26-A.

(The letter was accordingly marked for identification as Defendant's Exhibit 26 and 26-A.)

"I show the witness Defendant's Exhibit 26"—formerly 27—"and ask him to read it.

"Q. Is this a letter which you sent to your son?"

"A. Yes."

Mr. Baum: I offer Defendant's Exhibit 26 in evidence.

(The letter, heretofore identified as Defendant's Exhibit 26, was received in evidence.)

(The following question and answer were then read):

"In this letter, Mr. von Opel, you requested information from your son concerning the details of the transactions in America, did you not?"

"A. I had no business asking for these details but the curiosity of a father induced me to write the letter."

Mr. Baum: I now skip—

Mr. Gallagher: Your Honor, we ask that the next question be read in, to show why he asked.

Mr. Baum: We will be glad to read it—

"Q. Didn't you ask for those details because you were being investigated by the foreign exchange control authorities?"

"A. That very likely had something to do with it."

Mr. Baum: I will skip the next question, since that letter is now in, and I will continue reading at the second line of page 73:

"Mr. von Opel, I show you Plaintiff's Exhibit 8, the draft of an agreement prepared by Mr. Hachenburg.

"And now I show you, Mr. von Opel, Plaintiff's Exhibit 24 and call your attention especially to the last sentence to that exhibit. The last sentence says that the gift
110 was carried through in accordance with the Hachenburg draft, does it not?

"A. The Hachenburg draft was modified somewhat by Wronker-Flatow.

"Q. The Hachenburg draft which I just showed you, provides for a holding company, does it not?

"A. So far as I can remember, yes.

"Q. But in Plaintiff's Exhibit 5 there is no mention of a holding company?

"A. No.

"Mr. Baum: I show the witness now Defendant's Exhibit D-8, the affidavit of Fritz von Opel, dated June 7, 1935, and ask to have translated to him the first full paragraph on page four of the affidavit."

Mr. Baum: That is now—it appears at folio 138 of the record on appeal.

(The reading from the deposition was resumed as follows):

"Q. That affidavit of your son Fritz says that he orally agreed with you that the shares would be put in a holding company, does it not?

"A. Yes.

"Q. Is that statement true?

"A. My son in his impulsive nature, upon the execution told me things that he was going to do with the
111. shares.

"Q. Whose idea was it to include a provision for a 'Niessbrauch' in Plaintiff's Exhibit 5?

"A. Unfortunately, it was my idea to insert the 'Niessbrauch' but it was interpreted differently than it was intended. This was intended to be a security so that he should support me if I lost everything.

"Q. When you executed Plaintiff's Exhibit 5 you wanted the 'Niessbrauch' provision in it did you not?

"A. Yes.

"Q. At the time the agreement was executed you thought it was important to have a 'Niessbrauch', did you not?

"A. I considered it important as a safeguard for me in my old age.

"Q. Would you have made the gift to your son if there had been no 'Niessbrauch' provision in the agreement?"

"A. I would not have signed the agreement if there has not been a protection for me in it.

"Q. Now you testified that the 'Niessbrauch' was included in the agreement so that your son could support you in the event you lost everything, did you not?

"A. Yes.

"Q. Where in Plaintiff's Exhibit 5 does it say that you were to have a 'Niessbrauch' so that your son should
112. support you if you lost everything?

"A. That is not stated here.

"Q. In this agreement, Plaintiff's Exhibit 5, it is provided that your son is to receive 20% of the income, is that correct?

"A. It says so there.

"Q. I show you now Plaintiff's Exhibit 8, the Hachenburg draft of the agreement and ask you whether or not it is provided that you should receive 75% of the income?

"A. As I just read quickly, that is what is stated therein.

"Q. Why was your share of the income changed from 75% to 80% when the agreement was executed?

"A. For the reason that we wanted to have more."

Mr. Baum: I desire to skip, now, to the top of page 77.

Mr. Gallagher: We ask that it be read in, Your Honor. We ask that that portion be read in.

Mr. Baum: I will read it, then—

"Q. Mr. von Opel, you testified that you knew Dr. Frankenburg only socially, is that correct?

"A. Socially, well we did not discuss girls only, we also talked about business matters.

"Q. Did you ever employ Dr. Frankenburg as your agent or representative?

113 "A. I often asked his advice but I never paid him for it. I do not recall that he ever requested anything for it.

"Q. Did he ever act on your behalf whether he was paid or not?

"A. He was employed by Adler and Company and we may have transacted some business because of his connection with that firm.

"Mr. Baum: I ask to have translated to the witness the first four sentences of paragraph 9 of Defendant's Exhibit D-8, the affidavit of Fritz von Opel of June 7, 1935.

"Q. Did you suggest to your son that Dr. Frankenburg should become Managing Director of the holding company?

"A. No.

"Q. Well then, is the statement made by your son Fritz not correct?

"A. After I made the gift of the shares to my son, he talked to me about it now and then but I said I didn't care, it was all the same to me.

"Mr. Baum: I now ask to have translated to the witness the first two sentences of paragraph fifteen of Defendant's Exhibit D-8, the affidavit of Fritz von Opel, dated June 7, 1935.

114 "Q. Is the statement that the key to the deposit was held by Dr. Frankenburg as your agent and representative true?

"A. I have nothing to do with the key.

"Q. Was Dr. Frankenburg your agent or representative for the purpose of safeguarding your 'Niessbrauch'?

"A. No.

"Q. Then would you say that the statement made by your son Fritz is not true?

"A. I do not wish to say. That may be an agreement between my son and Dr. Frankenburg in my interest.

"Q. Mr. von Opel, do you know a Mr. Theodore Hoffacker?

"A. I do not know him but the name sounds familiar to me as if I had heard it before.

"Q. As far as you can remember, did you ever have any business dealings with Mr. Hoffacker?

"A. No.

"Q. Mr. von Opel, did you ever give any instructions to your son or anyone else concerning what should be done with the shares of stock of the Spur Distributing Company?

"A. I hear that name for the first time today."

The Court: Excuse me just a moment. I will have to take a brief recess here for about 5 minutes.

(Following the recess):

The Court: Gentlemen, I am sorry our 5 minutes stretched out as it did, but I had an important conference with Judge Morris which took some time.

All right, Mr. Baum.

Mr. Baum: We were at the top of page 77—

"Mr. von Opel, in Plaintiff's Exhibit 5, in the first paragraph the agreement reads that it is your desire to preserve the shares in the male line of the family, is that not correct?"

"A. Yes.

"Q. What did you mean by that?"

"A. That my son and my children shall be connected with the Adam Opel firm which my father established and developed into a great enterprise.

"Q. But on October 5, 1931, you knew that General Motors had the right under their agreement, which is Plaintiff's Exhibit 3, to buy the shares any time up until 1934, did you not?"

"A. Yes, as it is written in the agreement.

"Q. And this agreement, Plaintiff's Exhibit 5, itself recognizes the possibility of such a sale by providing the 'Niessbranch' will attach to that property substituted for the shares, does it not?"

"A. That is written here.

116 "Then at the time you say this agreement was executed you knew that it was possible that your son would not keep any interest in the firm, did you not?"

"A. It was not clear that he would sell.

"Q. But General Motors could buy the shares whether he wanted to sell or not, couldn't they?"

"A. We had an agreement with General Motors, yes.

"Q. If ~~you~~ yourself had sold the shares to General Motors for dollars what would you have had to do with the dollars?"

"A. If I would have sold them I would have to report them to the authorities.

"Q. And under the law in 1931 you would have had to deliver the dollars to the Reichsbank for marks, would you not?"

"A. Yes."

Mr. Baum: I will now skip to line 4 on page 79:

"Mr. Baum: I ask to have marked as Defendant's Exhibit 27—formerly 28—a hand-written copy of a telegram addressed to the Prussian Minister of Justice, Berlin, and bearing the notation 'Dispatched about May 17, 1934'.

"I ask the witness to read Defendant's Exhibit 27, formerly 28.

117 "Q. Is that your handwriting on Defendant's Exhibit 27?

"A. No, no.

"Q. Is this a copy of a telegram which you sent to the Minister of Justice in Berlin?

"A. Yes."

Mr. Baum: I offer Defendant's Exhibit 27 in evidence.

(The copy of telegram was accordingly received in evidence as Defendant's Exhibit 27.)

(The reading from the deposition resumed):

"In this telegram, Mr. von Opel, the statement is made: 'My son's capital is working for Germany since return was always a matter of course for us. I shall cause my son to advise you how long it will take to wind up his American investments for the purpose of returning them'. Is that not correct?"

"A. I had to send off this telegram for political reasons.

"Q. What did you mean your son's capital is working for Germany?

"A. If it increases over there it really works also for Germany since my son is a German.

"Q. But your son was no longer a resident of Germany after 1929, was he?

"A. No.

118 "Q. You said you sent this telegram for political reasons, what did you mean by that statement?

"A. The government was always after me to return these assets which did not belong to me any more and for political considerations I had to send off this telegram.

"Q. Mr. von Opel, were you a member of the Nazi party?

"A. Yes.

"Q. When did you join the Nazi party?

"A. I joined around July 20, 1933, but my membership dated back to April 1, 1933.

"Q. Were you a contributing member of the SS?

"A. Yes.

"Q. And how much was your contribution per month to the SS?

"A. So far as I can remember, one hundred marks.

"Q. Do you recall having been appointed by Adolph Hitler to the National Academy for German law?

"A. Yes.

"Q. When?

"A. I do not know when it was but about 1934 or so.

"Q. How many people were members of the Academy for German law?

"A. I have no idea.

"Q. Did you know Adolph Hitler, personally?

119 "A. I met him on an exhibition stand when he visited an automobile exhibition.

"Q. And did you have your picture taken with him at that time?

"A. I believe yes."

Mr. Baum: -I will now skip to the middle of page 81, to the question reading "On the occasion of your 70th birthday"—

"Q. On the occasion of your 70th birthday did you receive a medal from Adolph Hitler?

"A. On my 70th birthday they wanted to confer upon me the golden party insignia but I refused that and I stated my wish that instead they give me the cross of merit in recognition of the services rendered by the motor car factory.

"Q. And did you at that time receive a personal telegram from Adolph Hitler?

"A. Yes.

"Q. Mr. von Opel, in 1933 did you have printed in a newspaper a call upon the people to vote for Adolph Hitler in March 1933?

"A. There was a call by the German industrialists which I also signed."

• Mr. Baum: That is all the cross-examination which I desire to read, Your Honor.

(Mr. Laufer accordingly returned to the trial table
120 from the witness stand.)

The Court: What is this Niessbrauch? What is the definition of that?

Mr. Burling: That is what I referred to yesterday, Your Honor, as a usufruct.

The Court: That is what I thought, but I wanted to make sure. I understood you were to have some testimony about it later, but I wanted to identify the word.

Mr. Burling: Yes, sir.

Mr. Gallagher: That is correct, Your Honor.

Page 32.

Mr. Ingoldsby (having assumed the witness stand): Just a minute. This is numbered differently. What are you starting with?

Mr. Gallagher (reading from deposition): This is—

"WILHELMINE DERN nee UEBEL, a witness, who, having been first duly sworn was examined and testified as follows:

Direct Examination

"By Mr. Connor:

"Q. Mrs. Dern will you give your full name for the record?

"A. Wilhelmine Dern.

"Q. What was your full maiden name?

"A. Wilhelmine Uebel.

121 "Q. Where do you live, Mrs. Dern?

"A. In Frankfurt.

"Q. Do you know Wilhelm von Opel?

"A. Since July 1, 1918.

"Q. Were you ever employed by him?

"A. 13 years.

"Q. During what period?

"A. July 1, 1918 to June 30, 1923 and then from March 1, 1927 to December 31, 1934.

"Q. And in what capacity were you employed?

"A. Private secretary.

"Q. Were you his first secretary during that period?

"A. Yes, I was the first secretary during this period."

Mr. Gallagher: I will ask to have marked as Plaintiff's Exhibit 25-A the property tax return of Wilhelm von Opel for 1931.

(The document was accordingly marked for identification as Plaintiff's Exhibit 25-A.)

Mr. Gallagher: I will ask to have marked as Plaintiff's Exhibit 25-B an amendment to exhibit 25-A.

(The amendment was marked for identification as Plaintiff's Exhibit 25-B.)

122 Mr. Gallagher: I will ask to have marked as Plaintiff's Exhibit 25-C a document entitled "ZU IV: SONSTIGES VERMOEGEN." This is 25-C, now (handing to the Deputy Clerk).

(The document was marked for identification as Plaintiff's Exhibit 25-C.)

(The reading from the deposition was resumed, Mr. Gallagher reading the questions and Mr. Ingoldsby the answers):

"I will ask you if you prepared this property tax return, Exhibit 25-A?

"Mrs. Dern: Yes.

"Q. Have you prepared that under the direction of Mr. Wilhelm von Opel?

"A. I prepared the return, then I submitted it to Mr. Wilhelm von Opel who approved the statement prepared by me.

"Q. Did Mr. von Opel sign the original of this?

"A. Probably. I only signed once a tax return when Mr. von Opel was on a world trip. Every other return has been signed by himself.

"Q. Do you know whether the original of this one was signed by him?

"A. I am unable to answer this definitely yes or no since a long time has gone.

"Q. Well you just stated that you only signed one
123 return and he signed all the rest of them. Did you mean by that that he signed this one also?

"A. I don't know.

"Q. Was this a copy of the return which was sent to the tax office by Mr. von Opel in the year 1931?

"A. Yes, absolutely.

"Q. I will ask you if this is an amendment to Exhibit 25-A which was also filed with the proper tax authorities?

"A. Yes.

"Q. And this is an amendment to the tax return which is Exhibit 25-A, is that correct?

"A. Yes.

"Q. I will ask you if you can tell us what Exhibit 25-C is?

"A. That is a statement to the number of the property tax return referred to in this statement.

"Q. I will call your attention to the figure 3,710,566.— R. M. at the bottom of page 2 of Exhibit 25-A and to the same figure at the bottom of Exhibit 25-C and ask you if those two figures represent the same item?

"A. Yes.

"Q. Do you know whether Exhibit 25-C was filed with the tax authorities?

"A. Today I can't say any more whether it has been sent but I can say that the figure in the tax return itself has been taken from this sheet. If the original from this sheet is not any more in the files of Mr. von Opel, then it has been submitted to the tax office.

"Mr. Connor: May it be understood that these documents are papers from Mr. von Opel's files and he would like the privilege of substituting copies.

"Mr. Baum agreed to this."

Mr. Gallagher: I will ask to have marked as Plaintiff's Exhibit 26 the property tax assessment of Wilhelm von Opel as of January 1, 1931, which is dated August 2, 1932.

(The property tax assessment was marked for identification as Plaintiff's Exhibit 26.)

Mr. Gallagher: I will ask to have marked as Plaintiff's Exhibit 27 amended property tax assessments of Wilhelm von Opel as of January 1, 1931, which is dated the 25th of November, 1932.

(The amended property tax assessment was accordingly marked for identification as Plaintiff's Exhibit 27.)

Mr. Gallagher: I ask to have marked as Plaintiff's Exhibit 28 amended property tax assessment of Wilhelm von Opel as of January 1, 1931, which is dated June 23, 1934.

(The document was marked for identification as Plaintiff's Exhibit 28.)

125 (The reading from deposition resumed):

"I will now ask you whether those documents are assessments served upon Wilhelm von Opel and his wife on the basis of his 1931 property tax return Plaintiff's Exhibit 25?

"A. Yes..

"Mr. Connor: It is understood that for all these papers taken from the files of Mr. von Opel, photostatic copies may be substituted.

"Mr. Baum: Yes."

Mr. Gallagher: I will ask to have marked as Plaintiff's Exhibit 29 a document entitled "ANZEIGE AUF GRUND DES VOLKSVERRATGESETZES"—"Report under the statute against National treason"—and dated October 27, 1933.

(The document was accordingly marked for identification as Plaintiff's Exhibit No. 29.)

Mr. Gallagher: I will ask to have marked as Plaintiff's Exhibit 29-A, a document consisting of seven pages, attached to Plaintiff's Exhibit 29.

(The seven-page document was accordingly marked for identification as Plaintiff's Exhibit 29-A.)

(The reading from deposition resumed):

126 "Q. Did you prepare Plaintiff's Exhibit 29, Mrs. Dern?

"A. Yes.

"Q. And was that signed by Wilhelm von Opel?

"A. Yes.

"Q. And was that submitted to the Finanzamt at Wiesbaden? (Revenue office)

"A. Yes.

"Q. I will ask you whether Plaintiff's Exhibit 29-A was signed by Wilhelm von Opel?

"A. Yes.

"Q. And was Plaintiff's Exhibit 29-A submitted with Plaintiff's Exhibit 29 at Wiesbaden?

"A. It cannot be otherwise.

"Q. Would your answer be 'yes' that it was?

"A. Yes.

"Q. You were familiar with Mr. Wilhelm von Opel's business affairs, were you not?

"A. Yes.

"Q. And were you familiar with the facts which are contained in Plaintiff's Exhibit 29 and 29-A?

"A. Yes.

"Q. And are the statements contained in Plaintiff's Exhibits 29 and 29-A accurate statements?

"A. Yes.

Mr. Gallagher: I now offer these in evidence.

127 (The documents heretofore identified as Plaintiff's Exhibits 25 through 29-A were accordingly received in evidence.)

(The reading from the deposition was resumed as follows:)

"I will go back a moment to this return marked Plaintiff's Exhibits 25, 25-A and 25-B and I will ask you if from your familiarity with Mr. von Opel's business affairs, the statements contained in those exhibits are true to the best of your knowledge and belief?

"A. Yes, absolutely.

"Q. During any part of the time that you were secretary to Wilhelm von Opel, do you know of any demand that was made upon Fritz von Opel, the son, for any income from the property which was given to Fritz as a gift?

"A. No, I do not know anything of any incoming money from Fritz von Opel.

"Q. Did you ever know of any demand or request made by the father upon the son for any income from the property which he gave him as a gift?

"A. No.

"Q. Did you know of any income or any payments ever having been made by a company called Uebersee Finanz Korporation to Mr. Wilhelm von Opel?

"A. No.

"Q. Did you ever know of any income from a company called Spur Distributing Company?

128 "A. No.

"Q. Did you ever know of any income to Wilhelm von Opel from a company called Harvard Brewing Company?

"A. No.

"Q. Did you ever know of any income coming to Mr. von Opel from Amerlogene, Inc.?

"A. No.

"Q. I will call your attention to the bottom paragraph on page six of Exhibit 29-A and ask you if you can explain that paragraph, Mrs. Dern?

"A. Today I do not know any more exactly what that means but it has something to do with the gift contract.

"Q. Did any of Mr. von Opel's books reflect what that was?

"A. No, I do not believe.

"Q. Do you have any recollection of the size of the amounts referred to there?

"A. No.

"Q. Are Mr. von Opel's books for that period available at this time do you know?

"A. Since 1935 I had nothing to do with Mr. Wilhelm von Opel. I do not know.

"Q. If the amounts referred to in that paragraph were other than small amounts, would you know about it, Mrs. Dern?

129 "A. Perhaps. It is hard to say.

"Q. Well, you state that according to your knowledge and understanding that no payments had ever been made to Mr. von Opel out of the property which he had given to his son Fritz, is that correct?

"A. I don't know of any payment. Nothing came.

"Q. Nothing came to the office, is that correct?

"A. Yes.

"Q. Did you ever hear of the son making a small advance to the father when the father was on a shooting trip to Austria or Hungary?

"A. I don't remember.

"Q. Did you ever hear of an advance being made by the son to the father when he was on a world trip some time in the 1930's?

"A. No, I didn't hear of that.

"Q. I will call your attention to the fact that Wilhelm von Opel has heretofore testified that he has had two or three advances from his son.

"A. That might be outside of my knowledge.

"Q. And that these advances were made when on one occasion the old gentleman was on a hunting trip in Austria and on a world trip and on a third occasion. Is it possible that that reference in the paragraph at the bottom of page six was to those advances that
130 Wilhelm von Opel testified about?

"A. Absolutely possible.

"Q. When you said paragraph six had something to do with the gift, what did you mean by that?

"A. When I made my statement I had in mind that the statement has been made in relation to paragraph six. This paragraph six relates to the gift agreement. I do not know any more today what the substance of the statement means.

"Q. Then do I understand correctly that in paragraph six you had no intent to state that any income had come from Fritz von Opel from the property which was given in the gift?

"A. I don't know of any income given to Wilhelm von Opel from this property.

"Mr. Connor: Will you read the last paragraph on page six of Plaintiff's exhibit 29-A out loud for the record?

"A. I advanced occasionally amounts for my son. These advances have been repaid to me by my son. I only mentioned that to my protection because eventually a claim against my son as of 1933 might be seen therein."

"Q. Does that paragraph mean that the father owed nothing to the son and the son owed nothing to the father?

"A. That means that the father advanced money
131 for the son which the son repaid again the father.

"Mr. Connor: I have asked the witness to read Plaintiff's Exhibit 7, being the letter dated October 3, 1931 from Dr. Max Hachenburg.

"I will also ask the witness to take a look at Plaintiff's Exhibit 5, the gift agreement.

"Q. Do you remember when this letter from Dr. Hachenburg was received by Mr. von Opel?

"A. Yes.

"Q. And do you remember the gift agreement which was drawn, a copy of which is Plaintiff's exhibit 5?

"A. Yes, I typed it.

"Q. By examining these two documents, can you tell when the gift agreement was drawn and signed?

"A. Yes, the date of Hachenburg's letter is obviously correct and the date of the gift contract is certainly correct too.

"Q. So that the gift agreement was executed on the 5th of October, 1931?

"A. Certainly on the date which is written on the document.

"Q. And where did you type this gift agreement?

"A. In my office in Ruesselsheim.

"Q. Do you know Wronker-Flatow?

"A. Yes.

132 "Q. Was he there at the time the gift agreement was executed?

"A. Yes."

(Mr. Laufer having replaced Mr. Ingoldsby on the witness stand, and Mr. Baum now reading the questions):

"Cross Examination

"The Witness: Mrs. Dern further testified as follows:

"By Mr. Baum:

"Q. Mrs. Dern, where do you live in Frankfurt?

"A. In Eisernhand 38.

"Q. How long have you lived there?

"A. Since March 1944.

"Q. When did your employment with Mr. von Opel terminate?

"A. December 31, 1934.

"Q. Did you take care of Mr. von Opel's personal affairs as well as his business affairs?

"A. Yes, both.

"Q. You testified that the gift agreement, Plaintiff's exhibit 5 was executed on the 5th of October, 1931. Who else was present when that gift agreement was executed?

"A. I cannot say precisely. I wrote the agreement.

133 "Q. But you know that Dr. Wronker-Flatow was there?

"A. By all means.

"Q. And Mr. von Opel and Mrs. von Opel and Fritz von Opel signed the agreement in your presence on that day?

"A. I was not present when the agreement was signed.

"Q. Then you were only present when it was typed on the machine, is that correct?

"A. Yes.

"Q. And you typed the date the 5th of October 1931 on it, did you not?

"A. On the day when I wrote it, yes.

"Q. But you don't know on what date it was signed, do you?

"A. I must think about it how it was. I cannot say for certain, I was not present.

"Q. When Mr. Connor asked you when the agreement was executed you said it was October 5, 1931, are you now saying that was not correct?

"A. He did not ask when the agreement was signed, he asked when the agreement was typed.

"Q. So that when you said it was made on October 5 you only meant it was typed on October 5?

"A. Yes.

"Q. And you have no idea of when it was signed?

134 "A. I believe for certain on the same day.

"Q. How do you know it was signed on that day?

"A. I do not know it but I believe it was.

"Q. I ask the witness to read Plaintiff's exhibit 8, the Hachenburg draft of the gift agreement. Now I'll ask the witness, have you ever seen the document which I have shown you?

"A. At that time, yes.

"Q. Did you use this document in typing the gift agreement, Plaintiff's exhibit 5?

"A. I do not recall any more.

"Q. What did you use in typing Plaintiff's exhibit 5?

"A. I do not remember any more. It may have been a dictation by Wronker-Flatow. I do not remember."

Mr. Baum: I will now skip to the top of page 43, the following page.

Mr. Gallagher: Just a moment, please.

Mr. Baum: Surely—

"Q. After you typed the original of Plaintiff's Exhibit 5, what did you do with it?

"A. I have taken it to Mr. von Opel to his room.

"Q. And you never saw it signed?

"A. I saw it later but I do not remember if I saw it on the same day.

135 "Q. And do you know of your own knowledge when this agreement was actually signed by Wilhelm von Opel, Fritz von Opel and Marta von Opel?

"A. I was not present but I can assume that it was on the same day because Mr. Wilhelm von Opel wanted the typing to be done.

"Mr. Baum: I ask Mr. Laufer (interpreter) to explain to the witness that the question asks whether she of her own knowledge knew and not what she can assume.

"A. I cannot say it when I was not present when it was signed."

Mr. Baum: That is all of the cross-examination, Your Honor.

(Mr. Laufer having returned to the trial table, and Mr. Ingoldsby having replaced him in the witness chair, to read the answers):

Mr. Gallagher: On page 136—

"Redirect Examination, Mrs. Dern

"I ask to have marked as Plaintiff's exhibit 5-A another copy of the gift agreement headed: 'Ruesselsheim, den 5. Oktober 1931'. (Ruesselsheim, dated 5 October 1931.)"

Now—

"We have asked you to come here from Frankfurt 136 again today, Mrs. Dern, to have you identify documents which were not shown to you the other day. I will hand you Plaintiff's exhibit 5-A and ask you to look it over. I will direct your attention particularly to the handwriting on the first page thereof opposite the word 'abschrift'. Whose handwriting is that?"

"A. Mine.

"Q. By reference to that handwriting, can you now tell us whether Plaintiff's exhibit 5-A was unquestionably a copy of the original gift agreement?"

"A. Yes.

"Q. Have you seen that document, Plaintiff's exhibit 5-A at any time since you left the employ of Wilhelm von Opel?"

"A. No. I see it for the first time today.

"Q. And by that answer you mean that today is the first time that you have seen this document since you left the employ of Wilhelm von Opel?"

"A. Yes.

"Mr. Connor: I offer Plaintiff's exhibit 5-A in evidence.

"Q. I will show you Plaintiff's exhibit 45 and ask you if that document was sent on behalf of Wilhelm von Opel to the Finanzamt Wiesbaden on or about January 2, 137 1932?"

"A. I must assume that for sure. I did not type it myself,

"Q. I will show you Plaintiff's Exhibit 38 and ask you if that is the preliminary tax assessment served upon Wilhelm von Opel by the Finanzamt Wiesbaden?

"A. Yes.

"Q. I will show you Plaintiff's Exhibit 39 and ask you if that is a copy of the reply sent to the Finanzamt Wiesbaden in response to Plaintiff's Exhibit 38?

"A. Yes.

"Q. I will show you Plaintiff's Exhibit 40 and ask you if that is the further tax assessment served upon Wilhelm von Opel by the Finanzamt Wiesbaden?

"A. Yes.

"Q. I will show you the envelope, Plaintiff's Exhibit 40-A and ask you if that was the envelope in which Plaintiff's Exhibit 40 was sent to Wilhelm von Opel?

"A. Certainly.

"Q. I will show you Plaintiff's Exhibit 41 and ask you if that is a copy of a letter which was sent to Wilhelm von Opel's office by Dr. Faust purporting to be a copy of a letter which Dr. Faust had sent to the Finanzamt at 138 Wiesbaden?

"A. That is certainly the case, it cannot be different.

"Q. I have asked you to examine every page in this book, Plaintiff's Exhibit 42 and now I ask you if you have examined every page in Plaintiff's Exhibit 42?

"A. Yes.

"Q. And who made the entries on all of the pages in that book?

"A. I made all the entries. There are some insignificant notes in the books written by someone else. These notes have been made after I left.

"Q. I will ask you if there are ~~any~~ pages in this book which refer to any business transactions of Wilhelm von Opel and Fritz von Opel?

"A. There is one Opel shares page in the book.

"Q. I will show you Plaintiff's Exhibit 42-A and ask you if that is the page you refer to?"

"A. Yes.

"Q. And is that the only page in Plaintiff's Exhibit 42 which refers to any business transactions involving Fritz von Opel?"

"A. The only one.

"Q. Is this book a complete record of the investments, that is bonds and securities, of Wilhelm von Opel covering the period from January 1, 1930 up until the time
139 you left the employ of Wilhelm von Opel?"

"A. Yes.

"Q. I call your attention to the fact that on the back cover of this book there appear the dates from January 1, 1930 until December 31, 1935 and also call your attention to the fact that you left Wilhelm von Opel's employ on December 31, 1934. I ask you to explain that notation on the cover of the book.

"A. I began this book on January 1, 1930. Before this time there was only very sketchy bookkeeping of the investments. Why the final date on the book shows the note to December 31, 1935, I do not know. I do not know whether they began a new book of similar type or not at that time.

"Q. But all the entries in the books except for a few insignificant notations were made by you, were they not?"

"A. Yes."

(During the reading from the deposition, just preceding, the documents referred to were marked accordingly as Plaintiff's Exhibits 45, 38, 39, 40, 40-A, 41, 42, 42-A.)

Mr. Gallagher: I now ask to have marked Plaintiff's Exhibit 54, a loose-leaf book and its contents—"Buchhaltung-1937."

140 (The loose-leaf book was marked for identification as Plaintiff's Exhibit 54.)

Mr. Gallagher: I also ask to have marked Plaintiff's Exhibit 55, a loose-leaf book and its contents, "Buchhaltung—1938."

(The loose-leaf book for 1938 was accordingly marked for identification as Plaintiff's Exhibit 55.)

Mr. Gallagher: I will also ask to have marked as Plaintiff's Exhibit 56 a loose-leaf book and its contents, "Buchhaltung—1939."

(The loose-leaf book for 1939 was marked for identification as Plaintiff's Exhibit 56.)

Mr. Gallagher: I will also ask to have marked as Plaintiff's Exhibit 57 a loose-leaf book and its contents, "Buchhaltung—1940."

(The loose-leaf book for 1940 was marked for identification as Plaintiff's Exhibit 57.)

Mr. Gallagher: (Resuming reading from the deposition)—

"I will show you Plaintiff's exhibits 54, 55, 56, and 57 and I will ask you if you can tell us what those exhibits are.

"A. The bookkeeping statements of Mr. Wilhelm von Opel for the years 1937, 1938, 1939 and 1940.

141. "Q. Are those books, Plaintiff's exhibits 54, 55, 56 and 57 a complete bookkeeping record of all of Wilhelm von Opel's income and expenditures during the years covered by the books?

"A. Yes."

Mr. Gallagher: I now offer those books in evidence.

(The loose-leaf books identified as Plaintiff's Exhibits 54, 55, 56 and 57 were received in evidence.)

Mr. Baum: No recross-examination, Your Honor.

Mr. Gallagher: Now turn to page 48, please—

"There has been marked as Plaintiff's Exhibit 30, property tax return of Wilhelm von Opel for the year 1935 to the Finanzamt at Wiesbaden, dated June 7, 1935."

(The property tax return was marked for identification as Plaintiff's Exhibit No. 30.)

"There has been marked as Plaintiff's Exhibit 30-A attachment I to paragraph IV A of Exhibit 30."

(The attachment was marked for identification as Plaintiff's Exhibit 30-A.)

"There has been marked as Plaintiff's Exhibit 30-B attachment II to paragraph IV a, Exhibit 30."

(The attachment II to Plaintiff's Exhibit 30 was marked for identification as Plaintiff's Exhibit 30-B.)

142 Mr. Burling: I am confused. I am not objecting. But you said that was all for the witness Dern. I don't know exactly what you are doing now. Are you interrogating a witness?

Mr. Gallagher: No; I am starting with—Excuse me just a moment—I am merely identifying all these documents before we start with the witness Esklony.

Mr. Burling: I have no objection, but it is an unusual procedure.

Mr. Gallagher: You want me to eliminate those pages, or this page, from the deposition, then? We will save time if we get them all marked at one time.

Mr. Burling: Very well.

Mr. Gallagher: She is going to refer to all these exhibits in her testimony.

Mr. Burling: I understand this is preparatory to the testimony of Esklony?

Mr. Gallagher: Yes, sir—

"There has been marked as Plaintiff's Exhibit 30-C attachment III to paragraph IV a of Exhibit 30."

(The attachment III to Plaintiff's Exhibit 30 was accordingly marked for identification as Plaintiff's Exhibit 30-C.)

"There has been marked as Plaintiff's Exhibit 30-D attachment 4 to paragraph IV b, of Exhibit 30."

143 (Attachment IV was marked for identification as Plaintiff's Exhibit 30-D.)

"There has been marked as Plaintiff's Exhibit 30-E attachment 5 to paragraph IV f, of Exhibit 30."

(Attachment 5 was marked for identification as Plaintiff's Exhibit 30-E.)

"There has been marked as Plaintiff's Exhibit 30-F attachment 6 to paragraph V a, of Exhibit 30."

(Attachment 6 was accordingly marked for identification as Plaintiff's Exhibit 30-F.)

"There has been marked as Plaintiff's Exhibit 31, preliminary property tax assessment as of January 1, 1935, dated May 5, 1936, addressed to Mr. and Mrs. Wilhelm von Opel."

(The preliminary property tax assessment was marked for identification as Plaintiff's Exhibit No. 31.)

"There has been marked as Plaintiff's Exhibit 32, final property tax assessment for the year 1935, bearing the hand-written date January 23, 1939, and having stamped thereon the date January 30, 1939."

(The final property tax assessment was marked for identification as Plaintiff's Exhibit No. 32).

149 "There has been marked as Plaintiff's Exhibit 33, amended property tax assessment as of January 1, 1935, bearing the hand-written date May 5, 1939, and stamped May 6, 1939, addressed to Wilhelm von Opel."

(The amended property tax assessment was marked for identification as Plaintiff's Exhibit No. 33.)

"There has been marked as Plaintiff's Exhibit 34, property tax return of Wilhelm von Opel for the year 1940, dated March 21, 1940."

(The property tax return was marked for identification as Plaintiff's Exhibit 34.)

"There has been marked as Plaintiff's Exhibit 34-A attachment I."

(Attachment I was marked for identification as Plaintiff's Exhibit No. 34-A.)

"There has been marked as Plaintiff's Exhibit No. 34-B attachment II."

(Attachment II was marked for identification as Plaintiff's Exhibit 34-B.)

"There has been marked as Plaintiff's Exhibit 34-C attachment III."

(Attachment III was marked for identification as Plaintiff's Exhibit 34-C.)

"There has been marked as Plaintiff's Exhibit No. 35 the report of claims against 'enemies residing in 145 foreign countries,' dated September 28, 1940."

(The report of claims, etc., was marked for identification as Plaintiff's Exhibit No. 35.)

"There has been marked as Plaintiff's Exhibit 35-A, letter dated September 28, 1940, which is a letter of transmittal of Exhibit 35."

(The letter was marked for identification as Plaintiff's Exhibit No. 35-A.)

The Court: I guess this is a convenient place to stop!

Mr. Gallagher: Yes, sir.

The Court: Until 2 o'clock.

(Accordingly, at 12:35 p.m., the luncheon recess was taken until 2 o'clock this afternoon.)

146

AFTERNOON SESSION

Deposition of EDITH ESKLONY

Mr. Gallagher: Page 49.

(The reading from this deposition, Mr. Gallagher the questions, and Mr. Ingoldsby, in the witness chair, the answers, proceeded as follows):

"Edith Esklony, a witness, was called, and having been first duly sworn, was examined and testified as follows:

"Direct Examination

"By Mr. Connor:

"Q. Miss Esklony, will you give your full name?"

"A. Edith Esklony.

"Q. And where do you live at the present time?

"A. In Wiesbaden.

"Q. How long have you lived in Wiesbaden?

"A. Since my birth.

"Q. What is your exact address?

"A. Dambachtal 13.

"Q. Do you know Mr. Wilhelm von Opel?

"A. Yes.

"Q. Are you presently employed by him?

"A. Yes.

"Q. How long have you been employed by him?

"A. Since February 1, 1932.

"Q. And in what capacity are you presently employed by Mr. von Opel?

"A. As private secretary.

"Q. Are you now his only private secretary?

"A. Yes.

"Q. And when did you first become his chief private secretary?

"A. In the fall of 1932.

"Q. And who was his chief private secretary prior to that time?

"A. Miss Bertha Fröntzel.

"Q. Where does she live?

"A. In Ruesselsheim.

"Q. Do you know her street address?

"A. No, I don't know exactly.

"Q. Do you know whether the name which you have given is her present name?

"A. Yes.

"Q. When you first went to work for Mr. von Opel in 1932 who was his chief secretary?

"A. Miss Uebel, now married, her name is Mrs. Dern.

"Q. And that is the same Mrs. Dern who testified yesterday, is it not?

"A. Yes.

"Q. And from 1932 up until 1939 were you an assistant secretary to Mr. Wilhelm von Opel?

148 "A. Yes.

"Q. And during the entire time you were either assistant secretary or secretary, had you become quite familiar with the business affairs of Mr. von Opel?

"A. Yes.

"Mr. Connor: I will show the witness Plaintiff's Exhibit No. 30 and Plaintiff's Exhibits No. 30-A through No. 30-F and ask her to look at them.

"Q. Did you prepare those documents, Plaintiff's Exhibits No. 30 and No. 30-A through No. 30-F?

"A. Yes, together with Miss Frentzel.

"Q. And were you familiar with the facts contained in Plaintiff's Exhibits No. 30 and No. 30-A through No. 30-F?

"A. Yes, on the basis of the material and books.

"Q. I will ask you to take a look at the word 'Wiesbaden' stamped at the top of page one of Plaintiff's Exhibit No. 30 and ask if that stamp was put on by the tax office at Wiesbaden?

"A. Yes.

"Q. Can you say whether Plaintiff's Exhibit No. 30 was filed with the Finanzamt at Wiesbaden?

"A. Yes, the original of this document.

"Q. Wasn't this document also presented to the Finanzamt at Wiesbaden since it was stamped by the
149 Wiesbaden tax office?

"A. We received these forms from the Finanzamt at Wiesbaden.

"Q. Is that a true copy of the original which was filed with the Finanzamt at Wiesbaden?

"A. Yes.

"Q. And filed at the direction of Mr. Wilhelm von Opel?

"A. Yes.

"Q. And was the original of Plaintiff's Exhibit No. 30 signed by Wilhelm von Opel at the time it was filed?

"A. No, it was signed by Dr. Faust.

"Q. And Dr. Faust was Mr. Wilhelm von Opel's tax expert who handled his tax matters?

"A. Yes.

"Q. And before it was filed was it approved by Mr. Wilhelm von Opel?

"A. Either it was given to him before it was filed or it was submitted to him afterwards for his examination.

"Q. But this document was the document filed as the property tax return for Wilhelm von Opel for the year 1935, was it not?

"A. Yes.

"Q. Will you tell us what Plaintiff's Exhibit No. 150 30-A is?

"A. This document reports the list of securities which has been attached to the property tax return.

"Q. What is Plaintiff's Exhibit No. 30-B?

"A. That is the list of bonds held prior to a certain statutory date. This list was attached to the original of the property tax return.

"Q. What is Plaintiff's Exhibit No. 30-C?

"A. This list of the securities bringing dividends was also attached to the original tax return.

"Q. What is Plaintiff's Exhibit No. 30-D?

"A. This is the list of the mortgages and loans. This list too was attached to the original of the tax return.

"Q. What is Plaintiff's Exhibit No. 30-E?

"A. This is a statement relating to paragraph No. 4 of the tax return which in the original was attached to the tax return.

"Q. What is Plaintiff's Exhibit No. 30-F?

"A. This is a statement which has been given to paragraph No. 5-a of the tax return. This statement too was in the original attached to the tax return."

Mr. Gallagher: I now offer Plaintiff's Exhibits 30 and 30-A through 30-F.

151 (The documents heretofore identified as Plaintiff's Exhibits 30 and 30-A through 30-F were accordingly received in evidence.)

(The reading from the deposition follows):

"I will ask the witness to examine Plaintiff's Exhibit No. 31.

"Q. Is that the preliminary tax assessment served upon Mr. Wilhelm von Opel by the Finanzamt at Wiesbaden for the year 1935?

"A. Yes."

Mr. Gallagher: I offer Plaintiff's Exhibit 31.

(Plaintiff's Exhibit 31 was received in evidence.)

(The reading from the deposition resumed):

"I ask the witness to examine Plaintiff's Exhibit No. 32.

"Q. Is that a document entitled 'final property tax assessment as of January 1, 1935,' served upon Wilhelm von Opel?

"A. Yes."

Mr. Gallagher: I offer Plaintiff's Exhibit 32.

(Plaintiff's Exhibit 32 was now received in evidence.)

(The reading proceeding):

"I will ask the witness to examine Plaintiff's Exhibit No. 33.

"Q. Is that a document entitled 'property tax assessment as of January 1, 1935', served on Wilhelm von Opel?

152 "A. Yes."

Mr. Gallagher: I now offer Plaintiff's Exhibit 33.

(Plaintiff's Exhibit 33 was received in evidence.)

(The reading from the deposition resumed):

"I will ask the witness to examine Plaintiff's Exhibits Nos. 34, 34-A, 34-B and 34-C.

"Q. Are Plaintiff's Exhibits Nos. 34 and 34-A, 34-B and 34-C, true copies of the property tax return for the year 1940 filed by Wilhelm von Opel with the Finanzamt at Wiesbaden?

"A. Yes.

"Mr. Connor: I will call your attention to page three of Plaintiff's Exhibit No. 34 paragraph IV-c and ask you if there are not some references made to other attachments than exhibits Nos. 34-A, 34-B, and 34-C?

"A. These exhibits were the original bank statements of the banks. As far as I can remember, we attached the original of the bank statements because to copy these statements would have been a too difficult job.

"Q. Is that complete with the exception of those bank statements referred to in paragraph IV-c?

"A. Yes.

"Q. These exhibits constitute the full property tax return filed by Wilhelm von Opel for that year?

153 "A. Yes.

"Mr. Connor: I ask the witness to examine Plaintiff's Exhibits No. 35 and No. 35-A.

"Q. I will ask you to tell what Plaintiff's Exhibit No. 35 is?"

"A. A report of claims against enemies residing in foreign countries.

"Q. Is that document, Plaintiff's Exhibit No. 35, signed by you?"

"A. Yes.

"Q. As secretary for Mr. Wilhelm von Opel?"

"A. Yes.

"Q. And was this document filed with the Oberfinanzpräsident at Berlin?"

"A. Yes it was sent there with a letter of transmittal.

"Q. Is that the letter, Plaintiff's Exhibit No. 35-A?"

"A. Yes."

Mr. Gallagher: I offer Plaintiff's Exhibits 34, 35, and 35-A. I also offer 34-A, B, and C.

(The documents heretofore identified as Plaintiff's Exhibits 34, 34-A, 34-B, 34-C, and 34 and 35-A were received in evidence.)

(The reading from the deposition resumed):

154 "After the United States and Germany were at war, did Wilhelm von Opel ever file any similar type of report with the German authorities?"

"A. I don't know. I cannot say.

"I will ask to have the witness examine Plaintiff's Exhibits Nos. 36 and 37.

"I have had marked as Plaintiff's Exhibit No. 36, a copy of a letter to the Reichsbankstelle at Wiesbaden, dated April 16, 1937 from Wilhelm von Opel and have had marked as Plaintiff's Exhibit No. 37, report of claims arising from financial transactions with the United States, dated April 16, 1937.

"Mr. Connor: I will now ask the witness, do you know whether in the first half of 1937 there was a German law

which required reporting any financial transactions with persons in foreign countries?

"A. Yes.

"Q. And were exhibits Nos. 36 and 37 filed in compliance with that requirement of German law?

"A. Yes.

"Q. And they were filed with the Reichsbank at Wiesbaden, were they not?

"A. Yes.

"Q. Do these two documents represent Wilhelm von Opel's report of all claims of any kind against 155 persons in the United States?

"A. Yes."

Mr. Gallagher: I now offer Plaintiff's Exhibits 36 and 37.

(Documents identified as Plaintiff's Exhibits 36 and 37 were received in evidence.)

Mr. Gallagher: I now turn to page 84—

"I ask to have marked as Plaintiff's Exhibit No. 38 copy of the preliminary gift tax assessment of the Finanzamt at Wiesbaden, dated January 7, 1932, addressed to Wilhelm von Opel."

"I will show Plaintiff's Exhibit No. 38 to the witness. Is that a copy of the preliminary tax assessment served on Wilhelm von Opel by the Finanzamt at Weisbaden?

"A. Yes.

"Q. I will ask the witness to take a look at Plaintiff's Exhibit No. 39. Was Plaintiff's Exhibit No. 39 filed by Wilhelm von Opel in response to request contained under column 10 on the third page of Plaintiff's Exhibit No. 38?

"A. Yes.

"Mr. Connor: I show the witness Plaintiff's Exhibits No. 40 and No. 40-A. Is this Exhibit No. 40 the further preliminary tax assessment served upon Mr. Wilhelm von Opel by the Finanzamt Wiesbaden?"

"A. Yes.

"Q. And is Exhibit No. 40-A the envelope in which Exhibit No. 40 was sent to Wilhelm von Opel?"

"A. Yes.

"Q. Is Exhibit No. 41 a copy of a letter sent to the Finanzamt Wiesbaden by Dr. Faust on behalf of Wilhelm von Opel?"

"A. Yes."

Mr. Gallagher: I now offer Plaintiff's Exhibits 38, 39, 40, 40-A and 41.

(The documents heretofore identified as Plaintiff's Exhibits 38, 39, 40, 40-A and 41 were accordingly received in evidence.)

(The reading from the deposition resumed):

"Q. I believe you stated you came to work for Mr. Von Opel first on February 1, 1932, is that correct?"

"A. Yes.

"Q. I believe you stated that until some time in 1939 you were assistant secretary?"

"A. Yes I convinced myself that it was July 1, 1939.

"Q. And although you were not first secretary to Mr. von Opel up to that period in 1939, I believe you stated you acquired an accurate familiarity with his books and records, is that so?"

157 "A. Yes.

"Q. And a familiarity with his business affairs?"

"A. Yes."

"Q. At any time after you went to work for Mr. von Opel did you have anything to do with drafting the gift agreement, Exhibit No. 5f

"A. No.

"Q. Were your duties such that you would have known if the gift agreement had been typed after you came to work for Mr. von Opel?

"A. Yes.

"Q. Were you familiar with the book in which the record of the shares owned by Mr. Wilhelm von Opel was kept?

"A. Yes.

"Q. And did these books at any time after you went to work for Mr. von Opel carry the 600 shares of Adam Opel stock which was the subject of the gift agreement as owned by Wilhelm von Opel?

"A. No."

Mr. Gallagher: Now down to the bottom of the page:

"Q. After you came to work for Mr. von Opel on February 1932 did his books of account ever carry or contain any General Motors shares which were the proceeds of the 600 shares of Adam Opel stock?

"A. No, I don't know of any.

158 "Q. Did Wilhelm von Opel's books of account ever carry any share ownership in the Uebersee Finanz Korporation?

"A. No.

"Q. Or any accounts or debts receivable from Uebersee Finanz Korporation?

"A. No.

"Q. Did the books of account ever carry any shares of stock of a company called the Spur Distributing Company?

"A. No. Just at this moment I learned this name.

"Q. Did Wilhelm von Opel's books of account ever carry any shares of stock in a company called the Harvard Brewing Company?

"A. No. This name, too, I learned the first time today.

"Q. Did Wilhelm von Opel's books of account ever carry any shares of stock in a company called Amerlagene?

"A. No, this name too, I learned the first time now.

"Q. Did his books of account ever carry any shares of stock in a company called the Hurricane Oil Company?

"A. No.

"Q. Did Wilhelm von Opel, to your knowledge, ever have any communication with companies by those names or any companies with names similar to them?

"A. No, I don't know of it.

159 "Q. Do you know of any report ever made by Dr. Faust in respect to the Uebersee Finanz Korporation?

"A. No.

"Q. Or any report by Dr. Faust in respect to the Spur Distributing Company, Harvard, Amerlagene Inc., or the Hurricane Oil Company?

"A. No.

"Q. Do you recollect any written communication at all in the files or papers of Wilhelm von Opel from Dr. Hanns Frankenburg?

"A. No, not in regard to commercial matters.

"Q. Will you state whether or not, to your knowledge, any payments of money were ever made to Wilhelm von Opel by Uebersee Finanz Korporation, Spur Distributing Company, Harvard, Amerlagene, Inc., or Hurricane?

"A. No, I did not make any book entries in regard to those payments and I have not seen such book entries.

"Q. If any payments had been made from these companies would your duties not have been such that you would have known about such payments?

"A. Yes, even in cases where I have not made the book entries myself I would have seen such book entries whenever I prepared the income tax return or similar returns.

160 "Q. Was there an account in any of Mr. Wilhelm von Opel's books in respect to Fritz von Opel?

"A. Yes, in the book kept by Mrs. Dern covering the year 1934 and probably years before. Later on we had no account 'Fritz von Opel'.

"Q. Did you ever see the account 'Fritz von Opel'?

"A. Yes, I remember."

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(The reading from the deposition continued:)

"Q. Miss Esklony, did you at my request go to Ruesselsheim this morning for the purpose of ascertaining whether Wilhelm von Opel's books of account were still in existence?

"A. Yes.

"Q. And where did you go in Ruesselsheim to look for those books?

"A. In the room in which we put the files when Mr. Wilhelm von Opel had to abandon his room suddenly.

"Q. And what was the date when Mr. Wilhelm von Opel had to abandon his office suddenly?

"A. In October 1945.

"Q. And did you find any books of account this morning?

"A. Yes.

"Q. And did you bring them here?

"A. Yes.

161 "Q. And those books which you got are now in the room, are they not?

"A. Yes.

"Q. And prior to this morning, when did you last see those books?

"A. In October 1945.

"Q. You say that Mr. Wilhelm von Opel had to abandon a certain office or room that he had to leave?

"A. His two office rooms.

"Q. Where were those two office rooms located?

"A. In the Adam Opel, A.G.

"Q. Who put him out of those offices?

"A. The trustee of Adam Opel, A.G., who has now been appointed.

"Q. How long did he give Mr. von Opel to get out of those offices?

"A. Only one day.

"Q. And then, where did he move his files and materials?

"A. A large part has been burned and another part has been put in a room situated in a house close to the office. This house is administered by a Mr. Uebel.

"Mr. Connor: I ask to have marked as Plaintiff's Exhibit No. 42, closed out share accounts, January 1900 to December 31, 1935. (ERLEDIGTES AKTIENBUCH) LL 162 is agreed that this book will be referred to as his investment record.

"Mr. Baum: I would like to have the record show that this is a looseleaf binder.

"Q. Mr. Connor: I will show the witness Plaintiff's Exhibit No. 42 and ask her to state what that book is?

"A. That is a book which covers all investments of Mr. Wilhelm von Opel for the period January 1930 to December 31, 1935."

Mr. Gallagher: I now offer Plaintiff's Exhibit 42.

(The book heretofore identified as Plaintiff's Exhibit 42 was received in evidence.)

(The reading from the deposition continued:)

"Did you make the entries which appear in this book, Plaintiff's Exhibit No. 42?"

"A. No, Mrs. Dern did.

"Q. Are you familiar with the entries which are made in that book from your knowledge of Mr. Wilhelm von Opel's business affairs?

"A. Yes.

"Q. Do you know whether that is a complete record of Mr. Wilhelm von Opel's investment accounts for the period covered by the book?

"A. Yes.

"Mr. Connor: I will ask to have marked as Plaintiff's Exhibit No. 42-A a page in Plaintiff's Exhibit No. 42 bearing the heading: 'The National City Bank, New York, New York, 55 Wall Street.'

"Q. I will ask the witness if that page refers to the gift to Fritz von Opel?

"A. Yes. Mrs. Dern made the note: 'By gift to Fritz von Opel compare document of October 5, 1931'."

Mr. Gallagher: Plaintiff's Exhibit 42 has been offered in evidence, and Plaintiff's Exhibits 42-A, as a part of Plaintiff's Exhibit 42, is also offered.

(Plaintiff's Exhibit 42-A was now received in evidence.)

Mr. Gallagher: I will ask to have marked as Plaintiff's exhibit 43 a book which contains income and expenses for Mr. Wilhelm von Opel during the year 1935.

(The book was marked for identification as Plaintiff's Exhibit 43.)

(The question and answer were then read:)

"I will show the witness Plaintiff's Exhibit 43 and ask her to state for the record what that book is?

"A. That is the book which contains all income and expenses of Mr. Wilhelm von Opel during the year 1935."

Mr. Gallagher: I now offer Plaintiff's Exhibit 43.

(The book heretofore identified as Plaintiff's Exhibit 43 was received in evidence.)

164 (The reading from the deposition resumed:)

"Mr. Baum: I would like the record to show that this is also a looseleaf binder.

"Mr. Connor: I will ask to have marked Plaintiff's Exhibit No. 44, a book which contains income and expenses for Mr. Wilhelm von Opel during the year 1936."

(The book referred to was now marked for identification as Plaintiff's Exhibit 44.)

(The question and answer then followed:)

"I will show the witness Plaintiff's Exhibit No. 44 and ask her to describe what it is.

"A. That is the bookkeeping book containing all income and expenses for Mr. Wilhelm von Opel during the year 1936."

Mr. Gallagher: I now offer Plaintiff's Exhibit 44.

(The book heretofore identified as Plaintiff's Exhibit 44 was received in evidence.)

(The reading from the deposition, continued:)

"Mr. Baum: I would like the record to show that this is also a looseleaf binder.

"Mr. Connor: Now in Plaintiff's Exhibit No. 43, is there any page which has referred to Fritz von Opel?

"A. Only the page entitled 'Patent Account'. This account contained payments made for patents belonging to Fritz von Opel.

165 "Mr. Connor: The entire book has been offered in evidence but for purposes of clarity I will ask to have the page referred to, marked as Plaintiff's Exhibit No. 43-A."—the page entitled "Patent Account".

(The page referred to was marked for identification as Plaintiff's Exhibit 43-A.)

"Mr. Connor: Will you briefly and generally describe what those entries refer to on Plaintiff's Exhibit No. 43-A?"

"A. The entries made on this page refer almost all to payments made to Mr. Dyhr, the patent technician of Fritz von Opel.

"Q. Who paid those amounts?"

"A. Mr. Wilhelm von Opel.

"Mr. Connor: I will ask to have marked as Plaintiff's Exhibit No. 44-A a page in Exhibit No. 44 entitled 'Patent-Konto'." This page is marked merely for purpose of identification, the whole book having been offered in evidence.

"Mr. Connor: I ask the witness to take a look at Plaintiff's Exhibit No. 44-A. I will ask you to describe for the record what the entries on that page are."

"A. On this page there are entered the payments made by Mr. Wilhelm von Opel to Mr. Dyhr during the year 1926.

166 "Q. Are there any other pages in Plaintiff's Exhibit No. 44 which refer to any transactions of or with Fritz von Opel?"

"A. No.

"Q. When you went to Ruesselsheim this morning to look for the books of Wilhelm von Opel, did you look for books of account prior to 1935, that is preceding the time covered by Plaintiff's Exhibit No. 43?"

"A. Yes.

Q. And did you look very diligently for those books?

A. Yes.

Q. Did you find those books?

A. No, I am sorry.

Q. Have you any idea of what became of those books of account preceding the year 1935?

A. As far as I remember there is only one book involved and this one book has been burned.

Q. When?

A. The day when we vacated in October 1945.

Q. You said that you looked for those books for the period to 1935 this morning?

A. Yes.

Q. When you were looking for them you had no distinct recollection of them having been burned, did you?

167 A. No. Otherwise I wouldn't have looked for them.

Q. What makes you think that they were or may have been burned?

A. It was a different type of book involved than the books presented to me before. In 1935 they established another system of bookkeeping.

Q. Why were these other books of account not burned in 1945?

A. I wanted to have retained all the books belonging to the new bookkeeping system, so that the new bookkeeping system would remain complete.

Q. Were you short of office space or did you have such reasons as that for getting rid of the books prior to 1935?

A. No, absolutely. If we would have considered these books of special importance we could have found the space to keep them. The period during which the books had been kept was already lowered to ten years and later to five years.

Q. By whom?

A. By law.